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**APR 21 1992**

Federal Communications Commission  
Office of the Secretary

Lawrence N. Brandt ("Brandt"), by his attorneys, hereby replies to the Opposition of Normandy Broadcasting Corporation ("Normandy") to the Petition to Modify and Enlarge Issues ("Petition") that Brandt filed in this proceeding on March 30, 1992.

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WYLR issues/programs lists attached to Brandt's Petition were obtained by Sherrae J. Frasier. Normandy further argues that the requested issue should not be added because the materials submitted by Brandt reflect that WYLR broadcast at least "31 instances of...programming to meet specific needs and/or interests over the license period" and "it is preposterous to imagine Lynch deliberately lying on this matter, which at worst is a clerical or administrative matter, even if all allegations are true." For the reasons discussed below, Normandy's arguments in opposition to the Petition are without merit.

First, the fact that Normandy answered "no" to Question 8 on FCC Form 303-S does not negate the fact that Normandy misrepresented in its response to Question 8, which incorporated by reference Exhibit 4 to WYLR's renewal application explaining the "no" response, that it had placed issues/programs lists in WYLR's public file at the appropriate times. In Exhibit 4, Normandy stated that "[w]e believe we have, and in good faith, have attempted, to place all appropriate documentation required by...section[] 73.3526...to be in our file at the appropriate times." Normandy went on to state that "upon close examination, one of these reports was missing." [Emphasis added].

Brandt has shown not only that one report was missing, but that for six quarters the reports in the file contained no information whatsoever relevant to WYLR and that the reports reflect on their face that those covering the last three quarters of 1989 and the first quarter of 1990 were not placed in the public file until

June 12, 1990, which certainly was long after the appropriate time for placing these reports in the file. In view of these facts, and the fact that the deficiencies in WYLR's issues/programs list compliance had been brought to Normandy's attention in MM Docket 90-181, the statements in Exhibit 4 to WYLR's renewal application which are quoted above constituted serious misrepresentations.

Second, the fact that the affidavits of two WYLR employees that were submitted in MM Docket 90-181 reflect that WYLR's receptionist told Ms. Frasier that there were other "items" or "materials" in the file and Ms. Frasier did not request copies of the additional "items" or "materials" does not contradict Ms. Frasier's claim that the documents she obtained when she visited WYLR on June 22, 1990 included all of the issues/programs list in the WYLR file on that date. Clearly, if Normandy's employees had intended to state that there were additional issues/programs lists in the file that Ms. Frasier did not take away with her, they would have so stated. The fact that they use words such as "items" and "materials" rather than "issues/programs lists" leaves no doubt that, whatever they were referring to could not reasonably be described as "issues/programs lists" of the sort required by Section 73.3526 of the Commission's Rules. Moreover, the fact that Normandy has never directly claimed that there were other issues/programs lists in WYLR's public file on June 22, 1990 that were not included among the ones that Ms. Frasier carried away, let alone produced such additional issues/programs

lists, conclusively proves that no additional issues/programs lists were extant on June 22, 1992. The fact is that the additional material that WYLR's receptionist offered to copy for Ms. Frasier consisted of "certain awards such as the 'Crystal Award' and other awards that the station had been granted" and WYLR's receptionist had "made it clear [to Ms. Frasier] that this awards file was separate and distinct from the Quarterly Reports and Public Issues lists and she told [Ms. Frasier] that she 'did not think it was what you are looking for.'" See Declaration of Sherrae J. Frasier attached hereto.<sup>1/</sup>

Third, the fact that WYLR may have aired 31, or even 331 programs responsive to community issues and problems over the course of the license term is utterly irrelevant to the issue of whether Normandy's representation that it had placed all but one issues/programs list in its public file was false.

Finally, Normandy's representation that it had placed all but one issues/programs list in WYLR's public file at the appropriate times cannot be dismissed as a mere "clerical or administrative matter" because (i) it is clear on the face of the issues/programs that at during at least 4 calendar quarters of the license term (the last three of 1989 and the first of 1990) issues/programs lists were not placed in WYLR's public file at

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<sup>1/</sup> The original of this Declaration was filed in MM Docket 90-181 as part of Bradmark Broadcasting Company's August 16, 1990 Opposition to Petition to Add Abuse of Process and Related Issues.

the appropriate times,<sup>2/</sup> (ii) the deficiencies in WYLR's issues/programs list compliance had been brought to Normandy's attention in MM Docket 90-181 in June, 1990 and (iii) in the Initial Decision in MM Docket 90-181 Normandy was found to have engaged in three separate misrepresentations to the Commission and, therefore, not to be trusted to deal honestly with the Commission.

WHEREFORE, for the foregoing reasons, it is respectfully submitted that the issues in this proceeding should be enlarged to include the issue proposed in the first paragraph of the Petition to Modify and Enlarge Issues that Lawrence N. Brandt filed in this proceeding on February 24, 1992.  
added.

Respectfully submitted,



David Tillotson  
Arent, Fox, Kintner, Plotkin  
& Kahn  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
(202) 857-6027

Date: April 21, 1992

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<sup>2/</sup> It is stated on the face of the lists for each of these 4 calendar quarters that they were prepared June 12, 1990.

CERTIFICATE OF SERVICE

I, PATRICIA GERRICK, a secretary in the law office of Arent, Fox, Kintner, Plotkin & Kahn do hereby certify that a copy of the foregoing **REPLY** has been sent via U.S. Mail, First-Class postage prepaid this 21st day of April, 1992 to the following:

Administrative Law Judge  
Richard L. Sippel  
Federal Communications Commission  
2000 L Street, N.W., Room 212  
Washington, D.C. 20554

Paulette Laden, Esq.  
Federal Communications Commission  
Hearing Branch, Enforcement Division  
2025 M Street, N.W., Room 7212  
Washington, D.C. 20554

Christopher P. Lynch, President  
Normandy Broadcasting Corp.  
217 Dix Avenue  
Glens Falls, NY 12801

  
\_\_\_\_\_  
Patricia Gerrick

\* Hand Delivered

## DECLARATION OF SHERRAE J. FRASIER

Sherrae J. Frasier states under penalty of perjury as follows:

1. When I visited Stations WWSC/WYLR on the morning of June 22, 1990 and requested copies of the Quarterly Reports and Public Issues lists for those stations for a period of the past three years, I initially simply asked for the lists without stating my name or why I wanted them. At first the receptionist to whom I made the request simply stared at me, then got up from behind her desk and walked over to a filing cabinet behind the door. She told me this is where they kept their public issues files. She told me that I could look through the files. As I was skimming through the material, she asked me why I was interested in seeing this material. Being told that it is not an every day occurrence that people ask for these public records and it being my understanding that I was not obligated to state any reason as to why I wanted to see them, but, as my objective was to get the lists and to avoid any confrontation, I told her that my sister was doing research. It was my understanding that for whatever reason, the general public is allowed to have this information available to them. I have little doubt that Ms. Bennett did not believe this explanation since, because as I was waiting, several station employees came over to the area in which I was waiting and stared at me.

2. I asked Ms. Bennett if I could have copies of these materials. She said she was new there and wasn't sure of the procedure that she would have to check. She left the room and upon her return she stated that there would be a charge for the copies but that the copier was in use at that time and she needed to wait a few minutes. During this waiting period, she asked me questions such as "where do you work?", "what do you do?", "where do you live?" While we were waiting, Ms. Bennett also asked me to write down my name and address on a sheet of paper stating that she wanted this information to put me on their mailing list. This is how she knew my name.

After the copies were made, she stated that the most recent list was kept in a different location and could I come back for them later in the afternoon. I replied I would.

3. Upon my return in the afternoon, Ms. Bennett stated that the copies were not ready as she did not have time to photocopy the remaining list. She went out back to copy the list and then gave me this material. At that time, she went over to the filing cabinet to show me that she had additional material with information containing certain awards such as the "Crystal Award" and other awards that the station had been granted and she did offer to copy this material for me. However, Ms. Bennett made it clear that this awards file was separate and distinct from the

stations Quarterly Reports and Public Issues lists and she told me that she "did not think it was what you are looking for", but could come back if I felt it was necessary.

4. Based on what I was told and what I was given by Ms. Bennett when I visited WWSC/WYLR on June 22, 1990 and requested copies of the stations' Quarterly Reports and Public Issues lists, I believed in good faith that the documents that Ms. Bennett had provided to me constituted the sum and substance of the stations' Quarterly Reports and Public Issues lists for the period of the past three years to the date of my visit.

Dated: August 16, 1990

Sherrae Frasier  
Sherrae Frasier